

AKIN GUMP
STRAUSS HAUER & FELD LLP

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Attorneys at Law

NATALIE G. ROISMAN
703-891-7519/fax 703-891-7501
nroisman@akingump.com

October 24, 2002

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VIA MESSENGER

OCT 24 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Official Committee of Unsecured Creditors of WorldCom, Inc., et al.
Opposition to Direct Case
BellSouth Telecommunications, Inc., FCC Tariff No. 1, Transmittal No. 657
WC Docket No. 02-304

Dear Ms. Dortch:

Enclosed please find an original and four (4) copies of the Opposition to Direct Case ("Opposition") filed by the Official Committee ("Committee") of Unsecured Creditors of WorldCom, Inc., et al. in the above-referenced proceeding. The Committee also has filed the Opposition electronically. Please direct any inquiries to the undersigned.

Sincerely,



Natalie G. Roisman

Enclosure

cc: Ms. Julie Saulnier

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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of BellSouth
Telecommunications, Inc.

Tariff FCC No. 1, Transmittal No. 657

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION TO DIRECT CASE

The Official Committee ("Committee") of Unsecured Creditors of WorldCom, Inc. ("WorldCom"), et al., by its attorneys, respectfully submits this opposition ("Opposition") to the direct case ("Direct Case") filed by BellSouth Telecommunications, Inc. ("BellSouth") in support of its proposed tariff revisions contained in Transmittal No. 657. These revisions have been suspended and designated for investigation by the Pricing Policy Division ("Division") of the Federal Communications Commission ("Commission") Wireline Competition Bureau ("Bureau") in the above-referenced proceeding.¹

The Committee is an interested party in this proceeding. The Committee is a statutorily created committee appointed by the Office of the United States Trustee in connection with WorldCom's pending bankruptcy cases and charged with a fiduciary duty to all unsecured creditors of WorldCom. In general, the unsecured creditors' ability to receive value on the substantial debt they are owed by WorldCom is largely affected

¹ In the Matter of BellSouth Telecommunications Inc., Tariff FCC No. 1, Transmittal No. 657 Order, WC Docket No. 02-304 (rel. Sept. 18, 2002) ("Designation Order")

by WorldCom's post-bankruptcy value as a going concern, which is, in part, dependent on the amount of WorldCom's cash flow upon its emergence from bankruptcy.

Therefore, the Committee and its constituency are significantly affected by the Division's actions in the instant proceeding, because enactment of BellSouth's proposed tariff revisions could result in BellSouth requiring WorldCom to pay security deposits so substantial upon its emergence from bankruptcy that WorldCom's available cash flow and ability to operate profitably as a going concern would significantly decrease.

Contrary to BellSouth's assertion in its Direct Case, the increased level of risk and volatility in the telecommunications industry does not justify the provisions related to security deposits which BellSouth proposes to include in its interstate access tariff. These provisions are unjust, unreasonable, and discriminatory under Sections 201 and 202 of the Communications Act (the "Act") of 1934, as amended.² If BellSouth's proposed revisions are permitted to take effect, BellSouth will have the right to require security deposits equivalent to two months worth of average billing from any customer that BellSouth subjectively deems to be "uncreditworthy." Because BellSouth is a dominant, incumbent carrier, and its interstate access customers have no choice of provider other than BellSouth to reach BellSouth end users, BellSouth is unlikely to balance its interest in reducing its credit risk with its customers' interest in avoiding payment of unwarranted, subjectively refundable security deposits. As a result, BellSouth is likely to deem a customer "uncreditworthy" if it has any minimal basis on which to do so. This

² 47 U.S.C. §§ 201, 202. Section 201 provides that "all charges, practices, classifications, and regulations for and in connection with [a] communication service shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust and unreasonable is . . . unlawful." Section 202 provides that it is "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with [a] communication service."

result is unjust and unreasonable under Section 201 because it unfairly penalizes BellSouth's interstate access customers, who must use BellSouth's interstate access services to reach BellSouth end users. In addition, because BellSouth's carrier customers also are, in large part, BellSouth's competitors, BellSouth's application of its proposed tariff revisions likely will be discriminatory under Section 202.

For these reasons, discussed more fully herein, the Committee urges the Division to reject BellSouth's proposed tariff revisions. The Committee also requests that, if the Division does not reject or further suspend BellSouth's proposed tariff revisions, BellSouth clarify or be required to clarify in its tariff that its security deposit provisions do not apply to any customer subject to a pending bankruptcy proceeding or immediately upon its emergence from such proceeding.

I. THE PROPOSED TARIFF REVISIONS ARE UNJUSTIFIED BY MARKET CHANGES AND SHOULD BE REJECTED AS UNJUST, UNREASONABLE, AND DISCRIMINATORY

Despite the significant increase in risk and uncertainty in the market, the Committee does not believe that a dominant, incumbent carrier should have the right to exercise unfairly its market power in order to discriminate and thereby insulate itself from all risk of default by its customers, who are also its competitors. The Committee does not agree with BellSouth that it "merely conformed its tariff to prevailing competitive conditions." Rather, BellSouth has proposed revisions to its tariff that are unjust, unreasonable, and discriminatory under the Act and established Commission precedent,

³ Direct Case at ¶ 14

The proposed revisions are unjust and unreasonable because they would allow BellSouth to require its customers, even customers with a lengthy history of full and timely payment, to assume virtually all of BellSouth's credit **risk**. BellSouth has argued that leaving its existing security deposit provisions in place puts the risk of default of BellSouth's competitors on BellSouth's shareholders, and that its proposed revisions are designed to "restore balance."⁴ In fact, BellSouth's proposed revisions will distort the balance and cause BellSouth's customers, primarily its competitors, to unfairly shoulder the burden of risk at the sole determination of BellSouth. In a competitive market, a customer may seek an alternative provider if it believes that its current provider's security deposit policy is overly broad. In the interstate access service market, however, a customer seeking to access BellSouth end users must use and pay for BellSouth interstate access service. **As** a consequence, absent regulatory intervention, such customer also must accept BellSouth's security deposit policy and pay security deposits to the extent BellSouth requires. For a customer that has always made full and timely payment, and continues to make full and timely payment, but is deemed "uncreditworthy" by BellSouth, this could mean required payment of up to two months worth of average billing. In addition, even if such customer continues to pay its bills to BellSouth in full and on time, BellSouth could impose further security deposit requirements if the customer's monthly billing increases. This result clearly is unjust and unreasonable because it is highly likely to "place undue burdens on customers." The burden would be particularly high in today's telecommunications market. As the Division noted in the Designation Order, increasing security deposits would "impose additional costs on

⁴ Direct Case at ¶¶ 8, 17.

⁵ Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-305 (1986).

carriers that are also BellSouth's competitors at a time when access to capital markets is extremely limited.””

The proposed tariff revisions also have the potential to be discriminatory. BellSouth has stated that it will in part use “commercially acceptable” methods to determine creditworthiness. Specifically, BellSouth intends to employ two risk models: (1) Moody's Risk Management Services “RiskCalc” software; and (2) Dun & Bradstreet's “Risk Assessment Manayer” software.⁷ Each of these models provides a “risk rating” between 1 and 10, with 10 being the most risky. BellSouth's assessment of an acceptable score on either of these models appears to be based not on industry standards, but only on BellSouth's own “experience . . . that customers who score at least five . . . are sufficiently creditworthy.”* Although customers are permitted to submit information that could offset a poor score, BellSouth independently will examine information that “might negate good scores.”⁸ It is unclear what type of information BellSouth will seek to obtain in order to establish uncreditworthiness. However, it is clear that the ability of BellSouth credit managers to subjectively override one or both models' determination of creditworthiness affords BellSouth ample opportunity to discriminate against its customers in assessing creditworthiness. BellSouth has proposed the tariff revisions in an attempt to minimize its risk as much as possible. With this goal in mind, BellSouth is likely to deem customers to be uncreditworthy if it has any minimal basis on which to do so. This is especially problematic because many of BellSouth's interstate access customers are also its competitors. Ironically, BellSouth has claimed

⁷ Designation Order at ¶ 14

Direct Case at ¶¶ 28-29

⁸ Direct Case at ¶ 31

“Direct Case at ¶ 31

that its proposed revisions reflect the “competitive environment” when, in fact, they are wholly anticompetitive. This potential for discrimination against BellSouth’s interstate access customers, many of who are competitors, is unwarranted by changes in the market and violates Section 202.

The Division should reject BellSouth’s proposed tariff revisions and not allow BellSouth an opportunity to exert its market power to unfairly insulate itself from any risk of default.

11. BELLSOUTH SHOULD CLARIFY OR BE REQUIRED TO CLARIFY IN ITS TARIFF LANGUAGE THAT THE PROPOSED TARIFF REVISIONS ARE NOT APPLICABLE TO ANY CUSTOMER SUBJECT TO A PENDING BANKRUPTCY PROCEEDING

If the Division determines that BellSouth’s proposed tariff revisions or similar provisions related to security deposits may go into effect, the Committee requests that BellSouth clarify that the security deposit provisions are not applicable to any customer that is subject to a pending bankruptcy proceeding (“Debtor Customer”). BellSouth, unlike other incumbent carriers who recently have filed proposed revisions to their tariffs, appears to recognize that it would be at best inappropriate, and at worst, unlawful, to apply such provisions to Debtor Customers.’’ However, although BellSouth has indicated this position in a filing before the Commission, Debtor Customers are not explicitly excluded from the security deposit requirements in BellSouth’s proposed tariff language. Neither the Commission nor BellSouth’s customers can rely on BellSouth’s

¹⁰ Direct Case at ¶ 8.

¹¹ In the Matter of BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657. Bell South Reply at 10-11 (“BellSouth acknowledges that the bankruptcy courts have the jurisdiction to determine the terms of the adequate assurance pursuant to which BellSouth must continue to provide service to a debtor under the protection of the bankruptcy court and code”).

assurances that BellSouth will not attempt to apply any security deposit provisions to a Debtor Customer. Therefore, to the extent it is permitted to incorporate any new security deposit provisions in its tariff, BellSouth must explicitly provide in its tariff that bankruptcy is not a trigger for establishing “uncreditworthiness” and that new security deposits cannot be imposed against a Debtor Customer.

Application of BellSouth’s proposed security deposit provision to bankrupt customers would be inconsistent with bankruptcy law for several reasons. First, bankruptcy law is designed to afford a company a “breathing spell” to reorganize.’? If applied to a bankrupt customer, BellSouth’s proposed security deposit provisions, which essentially constitute a penalty for being uncreditworthy, would frustrate the purpose of bankruptcy protection. A company seeking to reorganize and pay off its existing debts would be saddled with an additional substantial expense. Second, imposition of security deposits against a customer that is the subject *of* a bankruptcy proceeding is unnecessary, as BellSouth already would be protected as a utility in a bankruptcy proceeding. Specifically, Section 366 of the Bankruptcy Code provides that utilities, including telecommunications carriers, may discontinue service if a debtor cannot furnish adequate assurance of ‘payment.’’ Third, and most importantly, application *of* BellSouth’s proposed security deposit provisions against a customer in bankruptcy would conflict with the jurisdiction of the bankruptcy court, which has the sole discretion to determine

¹² See, e.g., *In re Ionosphere Clubs, Inc.*, 105 B.R. 773 (Bankr. S.D.N.Y. 1989) (“The purpose of the protection provided by Chapter 11 is to give the debtor a breathing spell, an opportunity to rehabilitate its business and to enable the debtors to generate revenue”).

¹³ 11 **U.S.C.** § 366. “Adequate assurance” does not necessarily mean that a utility **is** entitled *to* a deposit. A bankruptcy court may find that the only security necessary *to* provide “adequate assurance” to a utility is grant of an administrative priority for the utility and creation of a streamlined procedure for the utility to obtain future relief and security if the debtor is late on a payment. See, e.g., *In re Caldor, Inc.-NY*, 199B.K.1,2 (S.D.N.Y. 1996), *aff’d*, 117 F. 3d 646 (2d Cir. 1999).

adequate assurance of payment and to modify the amount of the deposit or security in order to provide adequate assurance of payment.¹⁴ It is the role of the bankruptcy court, and not BellSouth, to determine whether a BellSouth customer that has entered bankruptcy will be able to make payments in the future for services rendered, i.e., whether such customer is “creditworthy.”

For these reasons, the proposed tariff revisions, if enacted, should not apply to a carrier in bankruptcy. Assuming that BellSouth agrees with this conclusion, BellSouth should clarify within its tariff language that bankruptcy is not a trigger for “uncreditworthiness” and that new security deposits cannot be imposed against a customer in bankruptcy. If BellSouth declines to do so, the Committee requests that the Division order BellSouth to do so.¹⁵

¹⁴ 11 U.S.C. § 366.

¹⁵ Section 525(a) of the Bankruptcy Code, 11 U.S.C. 525(a), prohibits a government agency, such as the Commission, from engaging in discrimination against a holder of a license or authorization on the basis of bankruptcy. If the Division allows BellSouth to impose security deposits on Debtor Customers because of their status as debtors, because most Debtor Customers of BellSouth’s interstate access services are holders of Commission licenses and/or authorizations, the Division effectively will be violating Section 525(a).

III. CONCLUSION

Based on the foregoing, the Committee requests that the Division reject BellSouth's proposed tariff revisions. Changes in the telecommunications industry do not justify the unjust, unreasonable, and potentially discriminatory security deposit provisions which BellSouth proposes to include in its interstate access tariff. The Committee also requests that, if the Division does not reject or further suspend BellSouth's proposed tariff revisions, and if BellSouth declines to voluntarily modify its tariff, the Division require BellSouth to specify in its tariff language that the new security deposit provisions are not applicable to any customer that is subject to a pending bankruptcy proceeding.

Respectfully submitted,

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
WORLDCOM, INC., ET AL.**

By:



Tom W. Davidson, Esq.
Natalie G. Roisman, Esq.
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1676 International Drive
Penthouse
McLean, VA 22102
(703) 891-7500

Its Attorneys

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